

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Terrence Jerome Hardy, #261984,	)	C/A No. 0:09-02580-JFA-PJG
	)	
Plaintiff,	)	
	)	<b>REPORT AND RECOMMENDATION</b>
vs.	)	
	)	
Leroy Cartledge; Scott Lewis,	)	
	)	
Defendants.	)	
_____	)	

The plaintiff, proceeding *pro se*, brought this action seeking relief pursuant to 42 U.S.C. § 1983. On February 19, 2010, the defendants filed a motion for summary judgment. (Docket Entry 22.) By order of this court filed February 22, 2010, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. (Docket Entry 23.)

On March 23, 2010, the court granted the plaintiff's motion to amend his Complaint, which was filed December 17, 2009. Additionally, the court's order allowed the defendants additional time in which to amend their motion for summary judgment if they so desired. (Docket Entry 25.) Following an extension of time, the defendants filed an amended motion for summary judgment on April 29, 2010. (Docket Entry 31.) The court entered a second Roseboro order on April 30, 2010, again advising the plaintiff of the dismissal and summary judgment procedures and the possible consequences if he failed to respond adequately. (Docket Entry 33.)

Notwithstanding the specific warning and instructions set forth in the court's Roseboro orders, the plaintiff failed to respond to either of the motions. As the plaintiff is proceeding *pro se*, the court filed an order on June 11, 2010, advising the plaintiff that it appeared to the court that he

was not opposing the amended motion for summary judgment and wished to abandon this action, and giving the plaintiff an additional fifteen (15) days in which to file his response to the defendants' amended motion for summary judgment. (Docket Entry 37.) The plaintiff was specifically warned that if he failed to respond, this action would be recommended for dismissal with prejudice for failure to prosecute. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b). Despite this additional warning, the plaintiff still did not respond. Therefore, the plaintiff meets all of the criteria for dismissal under Chandler Leasing Corp. v. Lopez, 669 F.2d 919 (4th Cir. 1982).<sup>1</sup>

### RECOMMENDATION

Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution. See Davis, 558 F.2d at 70; Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989) (stating that magistrate judge's prior explicit warning that a recommendation of dismissal would result from the plaintiff failing to obey his order was proper grounds for the district court to dismiss the suit when the plaintiff did not comply despite the warning), cert. denied sub nom, Ballard v. Volunteers of America, 493 U.S. 1084 (1990); Fed. R. Civ. P. 41(b). In light of the court's recommendation, the court further recommends that any pending motions (Docket Entry 31) be terminated.



Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

July 8, 2010  
Columbia, South Carolina

*The parties are referred to the Notice Page attached hereto.*

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<sup>1</sup> He is personally responsible for proceeding in a dilatory fashion, the Defendants are suffering prejudice by continuing to have these claims clouding their careers and continuing to incur legal expenses, and no sanctions appear to exist other than dismissal given the previous warnings and extensions provided. Chandler Leasing Corp., 669 F.2d at 920.

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
901 Richland Street  
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).